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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,091	01/14/2002	Raymond P. Johnston	54404US008	6682
32692	7590	03/23/2005	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			LEWIS, KIM M	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 03/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/961,091

Applicant(s)

JOHNSTON ET AL.

Examiner

Kim M. Lewis

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-54, 59 and 60 is/are rejected.
- 7) ☒ Claim(s) 55-58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> .                  |

## **DETAILED ACTION**

### ***Response to Amendment***

The remarks filed on 1/11/05 have been received and made of record. No amendments to the specification or claims have been made.

Claims 36-60 are pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36-38, 49, 50, 51, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,038,789 ("Dowdy et al.").

Regarding claim 36, Dowdy discloses applicant's claimed invention including a medical treatment article in the form of a surgical drape, comprising at least one fluid control film component having at least one microstructure-bearing surface with a plurality of channels therein that permit transport of fluid between a medical treatment site and a remote area (col. 1, lines 49-61, col. 2, lines 60-64 and col. 3, lines 6-11).

As regards claim 37, Dowdy et al. disclose that the material is a drape.

As regards claim 38, note reservoir (fluid pouch14).

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As regards claims 49 and 50, Dowdy et al. disclose that the film is translucent (col. 2, lines 60-64), thereby allowing visualization.

As regards claim 51, the method of using a medical article as presently claimed is necessarily practiced by mere use of the device as recited in claims 36.

As regard claim 59, Dowdy et al. disclose that the film is translucent (col. 2, lines 60-64), thereby allowing visualization.

As regards claim 60, the opening in the drape is transparent and allows visualization therethrough.

Claims 36-38 and 45-48 and 51-54 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,895,380 ("Turi et al.").

As regards claim 36, Turi et al. anticipate applicant's presently claimed invention. More specifically, Turi et al. disclose a medical treatment article in the form of a surgical dressings or sanitary napkins, comprising at least one fluid control film component (film 50) having at least one microstructure-bearing surface with a plurality of channels (openings 58) therein that permit transport of fluid between a medical treatment site and a remote area (absorbent body 42) (col. 1, lines 7-25, col. 6, line 52-col. 7, line 3, and col. 13, lines 34-64).

As regards claim 37, Turi et al. disclose a surgical dressing at col. 1, line 9.

As regards claim 38, the absorbent body is a fluid reservoir (col. 1, lines 7-15).

As regards claim 45, Turi et al. disclose adhesive on the film (col. 8, line 66- col. 9, line 5).

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As regards claim 46, the surgical dressings disclosed are capable of being a wound dressing and a wound drain, and are further capable of being inserted into a medical treatment site, since nothing in Turi et al. precludes the use inside a medical treatment site.

As regards claim 47, the fluid control component is capable of supplying a medicament from the reservoir to the medical treatment site.

As regards claim 48, note backing (51) and adhesive (56).

As regards claim 51, the method of using a medical article as presently claimed is necessarily practiced by mere use of the device as recited in claims 36.

Regarding claims 52-54, as can be read from col. 1, lines 7-15, fluid is transferred from a medical treatment site to a remote location (absorbent reservoir).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi et al.

As regards claims 39-44, Turi et al. disclosed an embossed film and fails to teach presently claimed limitations. Absent a critical teaching and/or a showing of unexpected results derived from providing the film with the claimed limitations, the examiner contends that the limitations such as the cross-sectional shape of the channels, the degree of the included angle, primary and secondary channels having a particular size, the depth of the channels, the material of the film and the that the film is translucent, are an obvious design choice which do not patentably distinguish applicant's invention.

#### ***Allowable Subject Matter***

Claims 55-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

The applicant argues that Dowdy fails to set forth a fluid control film component having at least one microstructure-bearing surface with a plurality of channels therein that permit transport of fluid between a medical treatment site and a remote area, that the "fluid control film" and "microreplication" as defined in the specification are not met, and that the microembossed surface merely permits fluid transport within the remote

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area, it does not permit fluid transport between the medical treatment site and the remote area. The examiner disagrees with this analogy.

In the abstract of Dowdy, it is disclosed that the device of Dowdy provides "a sterile field and fluid control". Further disclosed at the cited cols. in rejection section of this action is "a fluid collection portion 20 and an incise insert 21. The fluid collection portion is made of a fluid impervious material, preferably a translucent plastic film such as polyethylene having a micro embossed surface." It is inherent that a micro embossed surface is a surface having structure (embossments) that maintain an individual feature fidelity during manufacture.

As to the fluid transport, it is clear from the disclosure that fluid flows from the medical treatment site to the remote location (fluid collection portion 20), thereby, allowing fluid transport between the medical treatment site and the remote location.

As to the Turi rejections, the applicant primarily presents the same arguments as the arguments for Dowdy. Further argued is that the channels are not the same type of channels described in the specification. The same response above applies. Also, the examiner is aware of how the channels are described in the specification. However, the applicants have not defined the channel in a manner that they cannot take another form. *A specific definition of the term channel is not provided in the specification.*

In response to applicants' arguments regarding the 103 rejections in view of Turi, the examiner contends that fluid transport between a medical treatment site and a remote location occur in Turi. The examiner acknowledges applicants' mention of a previous interview, Appeal Brief and the arguments presented in the parent application

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and that the same arguments presented therein are reiterated. Nevertheless, the examiner maintains the present line of reasoning with these references.

### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

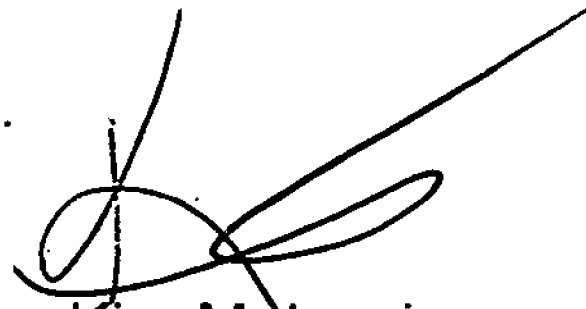
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571)272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis  
Primary Examiner  
Art Unit 3743

kml  
March 20, 2005